

Law Office of Joseph L. Stark & Assoc. APC

19197 Golden Valley Road

Suite 225

Santa Clarita CA 91387

T: (661) 799-1880

F: (661) 799-1881

John M. Bergerson - State Bar No. 125320

jmb@legalkix.com

Attorneys for: Defendant, HOUSING AUTHORITY OF THE CITY OF LOS ANGELES

UNITED STATES DISTRICT COURT

FOR THE

CENTRAL DISTRICT OF CALIFORNIA

GREGORY EDWARD GRAY) Case number: 2:23cv05224DOC(KES)

Plaintiff,

v.

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO DISMISS

HOUSING AUTHORITY OF THE
CITY OF LOS ANGELES,

Defendant.

1. INTRODUCTION

Plaintiff has filed a convoluted, confusing, lengthy complaint which focuses on many alleged wrongs by many different and diverse individuals and entities, none of which are parties to this action. This case is much to do about nothing as to this Defendant. Plaintiff does not make any factual allegations concerning the one named Defendant, the Housing Authority of the City of Los Angeles (Hereinafter "HACLA") other than to claim they failed to extend his EHV when requested. As seen from the attached Declaration of Aguilar this is not true. Each of

1 Mr. Gray's requests for extensions have been granted. His voucher is currently set
 2 to expire 1/1/24. As such, he has suffered no harm as the result of any acts or
 3 omission by HACLA. His Complaint thus fails to assert facts of any wrongdoing
 4 by HACLA and should be dismissed.

5 Read with a generous interpretation, the Complaint asserts two causes of
 6 action: (1) violation of 42 U.S.C. § 1983; and (2) violation of 42 U.S.C. § 1343. As
 7 set forth below the Complaint is defective and this Motion to Dismiss should be
 8 granted.

9 2. FACTS

10 Plaintiff was and is currently a participant in the Emergency Housing Voucher
 11 Program (EHV) established by HUD to address the effects of the covid pandemic.
 12 EHV assistance is Section 8 tenant-based assistance and is administered under the
 13 Housing Choice Voucher (HCV) regulations at 24 CFR part 982. Tenant-based
 14 assistance means that the rental assistance is provided on behalf of the family, who
 15 is free to select an eligible unit on the rental market. If the unit is approved for
 16 leasing by the PHA, the family enters into a lease with the owner. The PHA
 17 executes a housing assistance payments (HAP) contract with the property owner.
 18 The PHA makes monthly rental assistance payments directly to the owner, and the
 19 family is responsible for paying their share of the rent directly to the owner. See
 20 HUD FAQ

21 https://www.hud.gov/sites/dfiles/PIH/documents/EHV_USDA_Branded.pdf

22 Mr. Gray alleges a voucher was issued by HACLA on 6/2/22 which was to
 23 expire on 6/3/23. Mr. Gray had 12 full months to locate permanent housing and
 24 utilize his voucher. He failed to do so.

25 On 5/18/23 HACLA plaintiff requested a 12 month extension on the EHV
 26 voucher asserting a right to a "reasonable accommodation" for disability. The 12
 27 month extension was deemed inappropriate based upon HACLA's published
 28 policies. However, HACLA did consider the request for an extension. HACLA

1 approved a 30 day extension which extended the voucher until 7/2/23 pending a
 2 decision on the reasonable accommodation request. HACLA will not issue a 12
 3 month extension as requested by Mr. Gray pursuant to the HACLA Section 8
 4 Administrative Plan (which is approved by HUD and which HACLA is required to
 5 follow).

6 On 7/5/23 HACLA agreed, as a reasonable accommodation, to extend the
 7 voucher. The new expiration date was 10/3/23. Mr. Gray then submitted another
 8 request for extension which was also approved. His EHV is set to expire 1/1/24.
 9 (See Aguilar's Declaration)

10 Plaintiff apparently filed this action only weeks before the first extension of
 11 his EHV. As noted, the voucher was issued by HACLA. However, in reviewing the
 12 Complaint, there are no allegations that HACLA is responsible for his failure to
 13 secure permanent housing before his emergency voucher expires. He places blame
 14 on the Los Angeles County Housing Services Authority, and its subordinate service
 15 providers, the Salvation Army, People Assisting the Homeless and First to Serve.
 16 (Complaint ¶III Sec. C) Plaintiff claims these entities ignored his medical issues,
 17 stalled the process, lost his paperwork, submitted inaccurate information which
 18 caused him to lose time locating permanent housing before his EHV expired. There
 19 are no allegations or facts asserted concerning any actions by HACLA which
 20 delayed his efforts to obtain permanent housing.

21 As such, the Plaintiff has failed to allege any facts to support his claims
 22 against HACLA . As such the case should be dismissed.

23 3. **STANDARD OF REVIEW**

24 A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests for
 25 the legal sufficiency of the claims alleged in the complaint. *Ileto v. Glock, Inc.*, 349
 26 F.3d 1191, 1199-1200 (9th Cir. 2003). Review is limited to the contents of the
 27 complaint. *Allarcom Pay Television, Ltd. v. Gen. Instrument Corp.*, 69 F.3d 381,
 28 385 (9th Cir. 1995). To survive a motion to dismiss for failure to state a claim, a

1 complaint generally must satisfy only the minimal notice pleading requirements of
 2 Federal Rule of Civil Procedure 8, which requires that a complaint include a "short
 3 and plain statement of the claim showing that the pleader is entitled to relief." Fed.
 4 R. Civ. P. 8(a)(2).

5 A Rule 12(b)(6) motion tests the legal sufficiency of the claims asserted in the
 6 complaint. A Rule 12(b)(6) dismissal is proper only where there is either a "lack of
 7 a cognizable legal theory or the absence of sufficient facts alleged under a
 8 cognizable legal theory." *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th
 9 Cir. 1988). The court need not accept as true unreasonable inferences or legal
 10 conclusions cast in the form of factual allegations. See *Bell Atlantic Corp. v.*
 11 *Twombly*, 550 U.S. 544, 555 (2007).

12 A complaint may be dismissed under Rule 12(b)(6) for failure to state a claim
 13 if the plaintiff fails to state a cognizable legal theory, or has not alleged sufficient
 14 facts to support a cognizable legal theory. *Balistreri v. Pacifica Police Dep't*, 901
 15 F.2d 696, 699 (9th Cir. 1990). The court is to "accept all factual allegations in the
 16 complaint as true and construe the pleadings in the light most favorable to the
 17 nonmoving party." *Outdoor Media Group, Inc. v. City of Beaumont*, 506 F.3d 895,
 18 899-900 (9th Cir. 2007).

19 However, legally conclusory statements, not supported by actual factual
 20 allegations, need not be accepted. *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009).
 21 The allegations in the Complaint "must be enough to raise a right to relief above
 22 the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)
 23 (citations and quotations omitted). A claim has facial plausibility when the plaintiff
 24 pleads factual content that allows the court to draw the reasonable inference that the
 25 defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678 (citation
 26 omitted). "Where the well-pleaded facts do not permit the court to infer more than
 27 the mere possibility of misconduct, the complaint has alleged - but it has not
 28 'shown' - 'that the pleader is entitled to relief.'" *Id.* at 679. In the event dismissal is

1 warranted, it is generally without prejudice, unless it is clear the complaint cannot
2 be saved by any amendment. See *Sparling v. Daou*, 411 F.3d 1006, 1013 (9th Cir.
3 2005).

4 Factual allegations must be enough to raise a right to relief above the
5 speculative level, on the assumption that all the allegations in the complaint are true
6 (even if doubtful in fact)" (citations omitted). Thus, a complaint must "contain
7 sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible
8 on its face.' ... A claim has facial plausibility when the plaintiff pleads factual
9 content that allows the court to draw the reasonable inference that the defendant is
10 liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); see
11 also *Twombly*, 550 U.S. at 545 ("Factual allegations must be enough to raise a right
12 to relief above the speculative level, on the assumption that all the allegations in the
13 complaint are true (even if doubtful in fact)" (citations omitted); *Moss v. United*
14 *States Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009) ("[F]or a complaint to
15 survive a motion to dismiss, the non-conclusory 'factual content,' and reasonable
16 inferences from that content, must be plausibly suggestive of a claim entitling the
17 plaintiff to relief," citing *Iqbal* and *Twombly*).

18 As the Ninth Circuit has explained: "First, to be entitled to the presumption of
19 truth, allegations in a complaint or counterclaim may not simply recite the elements
20 of a cause of action, but must contain sufficient allegations of underlying facts to
21 give fair notice and to enable the opposing party to defend itself effectively.
22 Second, the factual allegations that are taken as true must plausibly suggest an
23 entitlement to relief, such that it is not unfair to require the opposing party to be
24 subjected to the expense of discovery and continued litigation." *Starr v. Baca*, 652
25 F.3d 1202, 1216 (9th Cir. 2011).

1 4. **PRO SE LITIGANTS MUST MEET**
2 **THE MINIMUM THRESHOLD**

3 Despite greater liberality accorded to pro se pleadings they nonetheless "must
4 meet some minimum threshold in providing a defendant with notice of what it is
5 that it allegedly did wrong." *Brazil v. United States*, 66 F.3d 193, 199 (9th Cir.
6 1996); see also *Ghazali v. Moran*, 46 F.3d 52, 54 (9th Cir. 1995) ("Although we
7 construe pleadings liberally in their favor, pro se litigants are bound by the rules of
8 procedure")

9 "A document filed pro se is 'to be liberally construed,' and 'a pro se complaint,
10 however inartfully pleaded, must be held to less stringent standards than formal
11 pleadings drafted by lawyers.'" *Erikson*, 551 U.S. at 94 (quoting *Estelle v. Gamble*,
12 429 U.S. 97, 106 (1976)). Nevertheless, in giving liberal construction to a pro se
13 civil rights complaint courts may not "supply essential elements of claims that were
14 not initially pled." *Chapman v. Pier 1 Imports (U.S.) Inc.*, 631 F.3d 939, 954 (9th
15 Cir. 2011) (quoting *Pena v. Gardner*, 976 F.2d 469, 471 (9th Cir.1992)). "The
16 plaintiff must allege with at least some degree of particularity overt acts which
17 defendants engaged in that support the plaintiff's claim." *Jones v. Cmty. Redev.*
18 *Agency*, 733 F.2d 646, 649 (9th Cir. 1984) (internal quotations omitted).

19 5. **A MOTION TO DISMISS IS A PROPER**
20 **MEANS TO ADDRESS A COMPLAINT**
21 **WHICH FAILS TO ALLEGE A CLAIM**
22 **UPON WHICH RELIEF MAY BE**
23 **GRANTED F.R.C.P. Rule 12(b)(6)**

24 The "allegations" as to HACLA in the Complaint consist of naming HACLA
25 in the caption of the pleading, alleging that HACLA issued his EHV and then failed
26 to grant extensions when Plaintiff was unable to secure permanent housing.
27 (Complaint ¶III Sec. C, and attachment Sec C ¶1). There are no other allegations
28

1 concerning HACLA in the entire Complaint. As set forth in the Aguilar
2 Declaration, HACLA has approved all the extensions requested by the Plaintiff.

3 Instead, Plaintiff places blame on the Los Angeles County Housing Services
4 Authority (hereinafter "LAHSA"), and its subordinate service providers, the
5 Salvation Army, People Assisting the Homeless and First to Serve. Plaintiff claims
6 these entities ignored his medical issues, stalled the process, lost his paperwork,
7 submitted inaccurate information and caused him to lose time locating permanent
8 housing before his EHV expires.

9 Early in the Complaint, Plaintiff alleges he corresponded with LAHSA and
10 HUD concerning his health challenges and "other issues". Complaint attachment C
11 ¶ 1 through 4.

12 Paragraphs 6 through 8 refer to Plaintiff's efforts to obtain an extension to his
13 EHV. He was denied a 12 month extension. Plaintiff notes that he needed the
14 extension "to recapture the time lost due to the actions of the above-mentioned
15 agencies" Complaint attachment Sec C ¶7. However, as noted, each of his requests
16 for an extension have thus far been granted.¹

17 The Complaint goes on for another 45 pages and 70 paragraphs devolving into
18 a litany of supposed conspiracies designed to harm Plaintiff. These range from the
19 bizarre to the sublime including purported conspiracy efforts by the owner of a
20 professional basketball team to interfere with the Plaintiff's multi billion dollar
21 development plans.

22 From these "facts", the Plaintiff purports to derive claims which, though all
23 but unrecognizable, appear to be (in effect) an action against HACLA under 42
24 USC §1983 for Due Process, Procedural Due Process, Equal Protection. Again,

25
26
27
28 ¹ Unaccountably, Plaintiff alleges he is apparently unaware of the extension though
its imminent expiration seems the primary impetus for this lawsuit.

1 though not well pled, it appears that the civil rights action is premised upon an
 2 assumption that HACLA is liable to him for the wrong doings of other agencies
 3 and organizations which purportedly interfered with his search for permanent
 4 housing.

5 6. **PLAINTIFF HAS AGAIN FAILED TO**
 6 **STATE A VIABLE CLAIM FOR THE**
 7 **VIOLATION OF HIS RIGHT 1983**
 8 **RIGHTS DUE TO ANY ALLEGED DUE**
 9 **PROCESS VIOLATIONS**

10 It is well-established that individuals receiving welfare have a property
 11 interest in continued receipt of benefits and the government must provide due
 12 process before terminating those benefits. See *Goldberg v. Kelly*, 397 U.S. 254
 13 (1970). Likewise, participants in Section 8 housing voucher programs have a
 14 property interest in housing benefits protected by the Due Process Clause. See
 15 *Nozzi v. Hous. Auth. Of City of Los Angeles*, 425 F. App'x 539, 541 (9th Cir. 2011)
 16 (citing *Ressler v. Pierce*, 692 F.2d 1212, 1215 (9th Cir. 1982)). "Due process is
 17 flexible and calls for such procedural protections as the particular situation
 18 demands." *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976).

19 Plaintiff has not made any allegations of any due process violations. The
 20 Complaint is devoid of any allegations of how HACLA interfered with any due
 21 process rights. Plaintiff had notice of when his EHV would expire. He was notified
 22 each time it was extended and knew (or should have reasonably known) the new
 23 expiration date.

24 "To obtain relief on § 1983 claims based upon procedural due process, the
 25 plaintiff must establish the existence of (1) a liberty or property interest protected
 26 by the Constitution; (2) a deprivation of the interest by the government; and (3)
 27 lack of process." *Guatay Christian Fellowship v. Cnty. of San Diego*, 670 F.3d 957,
 28 983 (9th Cir. 2011) (citation and alterations omitted), cert. denied, 568 U.S. 940

(2012). Thus, "[t]he first inquiry in every due process challenge is whether the plaintiff has been deprived of a protected interest in 'property' or 'liberty.'" *American Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 59 (1999); see also *Board of Regents of State Colls. v. Roth*, 408 U.S. 564, 569 (1972) ("The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property.") If a plaintiff is able to allege a protected property interest, the inquiry then becomes what process is due. Due process is a flexible doctrine that requires "such procedural protections as the particular situation demands." *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). The Supreme Court has explained that determining the dictates of due process in a particular setting generally requires consideration of three factors:

First the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Mathews v. Eldridge, 424 U.S. 319, 335 (1976).

Plaintiff fails to state a viable claim for violation of his right to due process. He asserts that only Defendants violated his right to procedural due process by denying an extension to his EHV,

7. **PLAINTIFF FAILS TO ALLEGE ANY
GROUNDS FOR THE RELIEF
SOUGHT**

Plaintiff fails adequately to plead that he was entitled to the relief that he sought from Defendant, or that Defendant had any obligation to provide such relief.

1 For example, Plaintiff claims that HACLA failed to provide him with a
2 "reasonable accommodation".

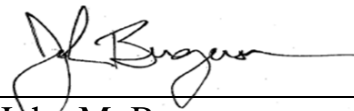
3 8. **CONCLUSION**

4 In dismissing a complaint, leave to amend must be granted unless it is clear
5 that the complaint's deficiencies cannot be cured by amendment. See *Flowers v.*
6 *First Hawaiian Bank*, 295 F.3d 966, 976 (9th Cir. 2002) (citing *Lucas v. Dep't of*
7 *Corporations*, 66 F.3d 245, 248 (9th Cir. 1995)). When amendment would be
8 futile, however, dismissal may be ordered with prejudice. *Dumas v. Kipp*, 90 F.3d
9 386, 393 (9th Cir. 1996); see also *Felton v. Hoover*, 56 F.App'x 837, 840 (9th Cir.
10 2003).

11 Based upon the foregoing, it is respectfully requested that this court dismiss
12 this action pursuant to FRCP Rule 12(b)(6). Alternatively, it is requested that the
13 court order Plaintiff to file a more definite statement of the action against
14 HOUSING AUTHORITY OF THE CITY OF LOS ANGELES.

15
16 DATED: October 4, 2023

17
18 JOSEPH L. STARK & ASSOC., APC

19
20 

21 John M. Bergerson,
22 Attorneys for Defendant, HOUSING
23 AUTHORITY OF THE CITY OF
24 LOS ANGELES
25
26
27
28

PROOF OF SERVICE

1013A (3) CCP Revised 1/1/88

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action: my business address is 19197 Golden Valley Road, Suite 225, Santa Clarita, CA 91387

On October 4, 2023 , I served the foregoing document described as MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS on THE INTERESTED PARTIES in this action by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list. by placing the original a true copy thereof enclosed in sealed envelopes addressed as follows:

Gregory Edward Gray
3183 Wilshire Boulevard
Suite 196K26
Los Angeles, CA 90010
213.638.2039
gegcbg@outlook.com

X **BY EMAIL** to the email address(es) above

BY MAIL

I deposited such envelope in the mail at Santa Clarita, California. The envelope was mailed with postage thereon fully prepaid.

I caused such envelope to be deposited in the mail at Santa Clarita, California. The envelope was mailed with postage thereon fully prepaid.

I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit. Executed on , at Santa Clarita, California.

BY PERSONAL SERVICE I delivered such envelope by hand to the offices of the addressee. Executed on , at Santa Clarita, California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

X (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

MARIA McKNIGHT
TYPE OR PRINT NAME

Maria McKnight
SIGNATURE